

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X  
5 YEMISI AKINYEMI,

6 PLAINTIFF,

7 -against-

8 MICHAEL CHERTOFF, Secretary,  
9 Department of Homeland Security,

10 DEFENDANT.  
11 -----X

12 DATE: October 29, 2007

13 TIME: 10:24 a.m.

14 EXAMINATION BEFORE TRIAL of the

15 Defendant, MICHAEL CHERTOFF, Secretary,

16 Department of Homeland Security, by GILBERT

17 PATRICK MURPHY, taken by the Plaintiff,

18 pursuant to Notice, held at the U.S. Attorney's

19 Office Southern District of New York, 86

20 Chambers Street, New York, New York 10007,

21 before a Notary Public of the State of New

22 York.  
23  
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2 A P P E A R A N C E S:

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4 LAW OFFICES OF K.C. OKOLI, PC  
Attorney for Plaintiff  
5 330 Seventh Avenue, 15th Floor  
New York, New York 10001  
6 BY: K.C. OKOLI, ESQ.

7

8 MICHAEL J. GARCIA, ESQ.  
United States Attorney for the  
9 Southern District of New York  
U.S. Department of Justice  
10 Attorney for the Defendant  
86 Chambers Street  
11 New York, New York 10007  
BY: JOHN D. CLOPPER, ESQ.  
12 Assistant U.S. Attorney

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14

ALSO PRESENT:  
15 MELANIE ACEVEDO, ESQ.  
U.S. Customs and Border Protection  
16 RALPH TALARICO, ESQ.  
The National Treasury Employees Union  
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2 G I L B E R T P A T R I C K M U R P H Y,  
3 called as a witness, having been first duly  
4 sworn by a Notary Public of the State of New  
5 York, was examined and testified as follows:

6

7 EXAMINATION BY

8 MR. OKOLI:

9 Q. Please state your name for the  
10 record.

11 A. Gilbert Patrick Murphy.

12 Q. Where do you reside?

13 A. 174 Brighton Avenue, Staten Island,  
14 New York 10301.

15 Q. Good morning.

16 A. Good morning.

17 Q. My name is K.C. Okoli. I represent  
18 the plaintiff in this lawsuit. I will be  
19 asking you a couple of questions and what I ask  
20 of you is your best recollection.

21 A. Right.

22 Q. If I ask you a question and you  
23 don't understand, please let me know and I will  
24 repeat the question and or rephrase it in such  
25 a way that you do understand.

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MURPHY

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If I ask you a question and you respond, I will assume that you fully understood the question; is that fair enough?

A. Fine.

Q. Where is your place of birth?

A. Jersey City, New Jersey.

Q. And for the record, what is your race?

A. White. Caucasian.

Q. And are you currently employed?

A. Yes.

Q. Who is your employer?

A. Department of Homeland Security.

Q. Any division of the Department of Homeland Security, any particular unit?

A. Customs. Customs and Border Protection.

Q. Thank you.

What's your highest level of education?

A. High school.

Q. When did you first become employed by the Customs and Border Protection, or its predecessor agency?

1 MURPHY

2 A. Uh, February 26, 1971.

3 Q. And what was your title when you  
4 were hired?

5 A. Sky marshal. Customs security  
6 officer.

7 Q. And what's your current title?

8 A. They keep changing it so often.  
9 The Department of Homeland Security  
10 officer.

11 Q. And what are your duties in your  
12 current title?

13 A. I'm the firearms instructor for  
14 Newark, New Jersey. And collateral duties  
15 is -- I'm try to, to -- property control  
16 officer.

17 Q. And when you say, "property control  
18 officer," what does that mean, what does it  
19 entail?

20 A. Control of high-value merchandise  
21 belonging to the government. Automobiles,  
22 radios, radiation detectors, scopes, things  
23 like that.

24 Q. And does firearms instructor mean  
25 what it says?

1 MURPHY

2 A. Yes.

3 Q. And where is your current job  
4 posting, what is your current job location?

5 A. 1200 Corbin Street -- 1210 Corbin  
6 Street, in New -- Port Elizabeth.

7 Q. And that's in New Jersey?

8 A. That's correct.

9 Q. For how long have you been  
10 operating out of 1210 Corbin Street?

11 A. Ten years.

12 Q. When did you become a Department of  
13 Homeland Security officer?

14 A. I don't know what you mean.

15 The Department of Homeland Security  
16 officer, the predecessor to that was customs  
17 inspector. They were just absorbed into the  
18 Department of Homeland Security after 9/11.  
19 Now, it's the same position, same job, just a  
20 different title.

21 Do you want Homeland Security when  
22 it was created or when I had the job?

23 Q. I was actually just following up on  
24 the title that you gave. I asked you what your  
25 current title was.

1 MURPHY

2 A. Yes.

3 Q. And you said Department of Homeland  
4 Security officer.

5 A. Yes.

6 Q. That is your current title?

7 A. That's correct.

8 Q. When did you start using that  
9 title?

10 A. Okay, 2002.

11 Q. Is there such a title, that you are  
12 aware of, that is known as senior customs and  
13 border protection officer?

14 A. Not officially.

15 There were senior inspectors that  
16 were absorbed into Homeland Security, they  
17 still call them senior, but it no longer  
18 applies.

19 Q. Is there any title, official title,  
20 that you are aware of, that is known as customs  
21 and border protection officer?

22 A. Yes.

23 Q. And did you ever occupy that title?

24 A. Yes.

25 Q. For what time period were you in

1 MURPHY

2 that title?

3 A. 2001, 2002.

4 Q. Did you ever use the title senior  
5 customs and border protection officer at any  
6 time?

7 A. Yes.

8 Q. For what time period did you use  
9 that title?

10 A. 2001, 2002.

11 Q. 2001, 2002?

12 A. That's correct.

13 Q. In the year 2005, what title did  
14 you use?

15 A. Department of Homeland Security  
16 officer.

17 Q. And what grade level title is that?

18 A. GS 11.

19 Q. Are you still a GS 11?

20 A. Yes.

21 Q. Who is your current supervisor?

22 A. Deputy Edward Fox.

23 Q. For how long has Deputy Fox been  
24 your supervisor?

25 A. Two years.



MURPHY

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Q. That would be starting from what

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year?

4

A. 2005.

5

Q. Do you remember what month in 2005?

6

A. No, I don't.

7

Q. Was it fall, summer --

8

A. In fall.

9

Q. Prior to Deputy Fox, who was your

10

supervisor?

11

A. Uh, Deputy Robert Osgard,

12

O-S-C-A-R-D.

13

Q. And do you know for what time

14

period Deputy Osgard was your supervisor?

15

A. Well, eight years prior to 2001, so

16

'93, '94.

17

Q. From '93 -- from are you saying --

18

A. 1993 to 2001 or 2002, whenever I

19

went to work for Mr. Fox.

20

Q. Okay, let me just clear this up.

21

Is it 1992, 1993?

22

A. '93, '94, in there.

23

Q. Okay, between '93 and '94, you

24

started working for Osgard?

25

A. That's correct.

1 MURPHY

2 Q. And you continued working for  
3 him --

4 A. Until Mr. Fox took over for him?

5 Q. And I believe you testified that  
6 you worked for Mr. Fox in 2005?

7 A. Okay, that would be it then. Yeah.

8 Q. I just wanted to be sure that  
9 there's nobody in between Osgard and Fox.

10 A. No.

11 Q. Do you know Yemisi Akinyemi --

12 A. Yes.

13 Q. -- the plaintiff in this case?

14 A. Yes.

15 Q. How did you come to know her?

16 A. On the gun range and her office was  
17 across the hall from the gun range in 1100  
18 Raymond Boulevard.

19 Q. Have you ever been assigned to work  
20 out of any of the airports?

21 A. No.

22 Q. Do you know where Cape Liberty  
23 customs is located?

24 A. Yes.

25 Q. Where is it located?

1 MURPHY

2 A. Bayonne, New Jersey, the old MOTB  
3 center.

4 Q. Sorry?

5 A. Bayonne, New Jersey. It was a  
6 military base in Bayonne.

7 Military Ocean Terminal of Bayonne  
8 is called MOTB.

9 Q. Have you ever been to the Liberty  
10 Cruise terminal?

11 A. Yes.

12 Q. How often have you been there?

13 MR. CLOPPER: Objection. Compound.

14 Q. Have you been there more than one  
15 occasion?

16 A. Yes.

17 Q. Have you been there this year?

18 A. No.

19 Q. Were you there in 2006?

20 A. No.

21 Q. Were you there in 2005?

22 A. Yes.

23 Q. What was the occasion for your  
24 being there in 2005?

25 A. To clear passengers coming off a

1 MURPHY

2 cruise ship.

3 Q. To clear passengers coming off a  
4 cruise ship?

5 A. That's correct.

6 Q. Who assigned you to clear  
7 passengers coming off a cruise ship when you  
8 went there?

9 A. Mr. Osgard's office.

10 Q. Do you recall whether this occasion  
11 was fall, summer or something else?

12 A. Mostly the cruise ships come in in  
13 the summer, from say May to October.

14 Q. Do you know who Dominic Calise is?

15 A. Yes.

16 Q. On the day that you went to clear  
17 passengers, did you see Dominic Calise at the  
18 location?

19 A. I don't know which day you are  
20 speaking of.

21 We would go there maybe two or  
22 three times a month. It's not that I went  
23 there once. And each time you would go, it  
24 would be a different supervisor. Calise is a  
25 grade 12 supervisor.

MURPHY

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Q. So, how many times would you say that you went to clear passengers at the Cape Liberty Cruise Terminal in the summer of 2005?

A. Okay, June, July, August, September. Three times a month for the six months. Eighteen.

Q. About eighteen times?

A. Yes.

Approximately.

Q. And on the occasions when you went to clear passengers, were you in uniform?

A. Yes.

Q. Did you ever go to the cruise terminal on the days that you were not on duty?

A. No.

Q. In the summer of 2005, did you ever pick up any passenger from the cruise terminal?

A. Pick up, as such?

MR. CLOPPER: Objection.

Vague and ambiguous.

MR. OKOLI: Okay.

MR. CLOPPER: Go ahead.

Q. Do you recall whether in the summer of 2005 any relation of yours traveled on a

1 MURPHY

2 cruise ship?

3 A. Yes.

4 Q. And who would that be?

5 A. My brother's widow, Eunice Murphy.

6 Q. Do you recall whether on any of the  
7 occasions that you were present at the Liberty  
8 Cruise Terminal whether Eunice Murphy came back  
9 from a cruise?

10 A. Yes.

11 Q. Do you remember whether on any of  
12 the other occasions that you went to the Cape  
13 Liberty Cruise Terminal you ever saw Yemisi  
14 Akinyemi at that location?

15 A. Yes.

16 Q. Do you recall how many times it was  
17 that you saw Yemisi Akinyemi at the Cape  
18 Liberty Cruise Terminal?

19 A. No, I don't.

20 Q. Do you recall ever seeing Yemisi  
21 Akinyemi at the Liberty Cruise Terminal at the  
22 same time that Dominic Calise was at that  
23 location?

24 A. I don't recall.

25 Q. Do you recall ever having a

MURPHY

1  
2 conversation with Dominic Calise in which he  
3 indicated that he did not see your name on the  
4 roster for the day and asked what you were  
5 there for?

6 A. No.

7 Q. On the day that you Eunice Murphy  
8 returned from a cruise, were you on duty on  
9 that day?

10 A. Yes.

11 Q. Have you ever been to the Cape  
12 Liberty Cruise Terminal in uniform on a day you  
13 were not on duty?

14 A. No.

15 Q. Has anyone at customs CBP -- I will  
16 use CBP for short.

17 A. Yes.

18 Q. Has anyone at CBP from 2005 to the  
19 present time that you are sitting here before  
20 me, has anyone from CBP questioned you  
21 concerning whether or not you have been at Cape  
22 Liberty Cruise Terminal in the summer of 2005  
23 when you were not on duty?

24 A. No.

25 Q. Just to be clear, is it your

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MURPHY

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testimony that nobody in CBP management up

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until this day has ever questioned you as to

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whether or not you went to Cape Liberty Cruise

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Terminal in uniform on a day that you were not

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on duty?

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MR. CLOPPER: Objection.

8

Asked and answered.

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You can go ahead and answer, to the

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best of your ability.

11

A. The question was?

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MR. OKOLI: Could you read back the

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question.

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(Whereupon, the referred to

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question was read back by the Reporter.)

16

A. That is correct, no one has

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questioned me about it.

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Q. Okay.

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Do you know what restricted areas

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at customs facilities are?

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A. Yes.

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Q. And give us an example of some

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restricted areas that you are aware of.

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A. Uh, the area I'm in, the high value

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area. The, uh, seized merchandise room. The



1 MURPHY

2 MR. CLOPPER: You can answer, to  
3 the best of your ability, yes.

4 A. As I stated, extended period of  
5 time. I didn't say fifteen minutes or a half  
6 of hour.

7 If you are waiting for a friend to  
8 get off, you can wait there. But it's up to  
9 the supervisor to let you stay there.

10 Normally, after a half and hour,  
11 they will ask you to leave.

12 Q. As you sit here today, you have  
13 been working for the customs since 1971,  
14 correct?

15 A. Correct.

16 Q. As you sit here today, do you have  
17 knowledge of anyone who was terminated from  
18 service at CBP solely on account of being  
19 present at a restricted area?

20 A. I have heard that Yemisi was, but  
21 not to my knowledge, this was a rumor.

22 That was the only time I heard of  
23 it.

24 Q. So, other than the plaintiff, rumor  
25 or fact, whatever it is, other than what you

1 MURPHY

2 heard concerning the plaintiff, is it fair to  
3 say that you have not heard any other rumor or  
4 story of someone being terminated for the sole  
5 purpose of accessing a restricted area?

6 A. That's correct.

7 MR. OKOLI: Okay that will be it.

8 Thank you.

9 MR. CLOPPER: Thank you Officer  
10 Murphy.

11 If you don't mind, I'm going to  
12 step out for just a moment and speak  
13 with AC counsel and counsel from the  
14 NTEU.

15 I will ask Mr. Murphy to stay here  
16 for a moment?

17 THE WITNESS: Sure.

18 MR. CLOPPER: We will just discuss  
19 whether or not -- I have a right to ask  
20 questions to you, we are just going to  
21 quickly discuss whether or not there are  
22 any questions I'm going to ask, and I  
23 will be back in just a moment.

24 (Whereupon, an off-the-record  
25 discussion was held.).